

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6912 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?
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MUKUNDBHAI BABUBHAI RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioner

MR VB GHARANIYA A.G.P. for Respondent No. 1.

Respondents no. 2 and 3 are served.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/11/98

ORAL JUDGEMENT

1. By means of this petition, the petitioner has sought for a direction to the respondents to absorb and continue the services of the petitioner as an Education Inspector in the pay scale of Rs. 1400-2600 with effect from 1-1-1986 and for quashing the relevant portion i.e. clause (4) of the Government Resolution No.SVD/1085/1507/87 dated 15-12-1987 whereby two employees including the petitioner who were getting salary of Rs. 592/- in the pay scale of Rs. 425-800 as Education Inspector were directed to be absorbed as

clerk-typist by giving one increment in the pay scale of Rs.. 950-1500.

2. The petitioner was appointed as Education Inspector by the Administrator of Sarvodaya Scheme, Central Office, Ahmedabad by the order dated 17-12-1979 in the pay scale of Rs. 425-800. The Government by its resolution dated 30-7-1981 cancelled the Sarvodaya scheme and as per the agreement between the Government and the employees of the Sarvodaya Scheme the Government absorbed all the employees of Sarvodaya Scheme in the Government with effect from 1-9-1981. In pursuance of that Government Resolution dated 30-7-1981 the petitioner was allocated Ahmedabad District Panchayat as Education Inspector by the order dated 31-8-1981. The petitioner worked as Education Inspector in Dhandhuka Taluka in place of one Mr. Vyas by the order dated 5-10-1981. Thereafter, the petitioner was transferred to different places and some times he was given work of administration of Education Branch of Taluka Panchayat in 1983 and also in March, 1987. Pay scale of Rs. 1400-2600 was given to the petitioner as Education Inspector by the Govt. Resolution dated 10-6-1987. By the Govt. Resolution dated 15-12-1987 the petitioner was reverted to the post of Clerk-cum-Typist in the pay scale of Rs.950-1500. The petitioner has challenged this order and sought for a direction to absorb the petitioner in the department as Education Inspector and not to revert him to the post of Clerk-cum-Typist.

3. The respondent no. 1 has filed an affidavit-in-reply wherein it is stated that Sarvodaya Scheme was finalised by the Government and the petitioner was recruited as Education Inspector in the grade of Rs.425-800 by the Agency administering the Sarvodaya scheme and not by the Government. The Government decided to discontinue Sarvodaya scheme by the Govt. Resolution dated 18-7-80 and relieved the staff working in the Sarvodaya scheme. That order was challenged in this Court and it was decided that all the full-time servants of this scheme who have completed one years' service as on 31-3-1981 will be taken in Panchayat service on ex-cadre in the pay scale and allowances which they were drawing as Sarvodaya employees. Another Special Civil Application No. 4246/83 was also filed by ex-cadre Karmachari Sangh against the Government to consider all those ex-cadre Government servants as Panchayat servants so that they can get benefits of pay and allowances which the other panchayat servants were enjoying. The Government has decided to consider the matter to absorb them in Panchayat service on the condition that the petition is withdrawn. The petition was withdrawn and

the Government decided to absorb all those ex-cadre employees on compassionate ground in the cadre of Clerk-cum-typist in the pay scale of Rs.. 950-1500 as a fresh employees and the petitioner was also absorbed in the cadre of clerk for which detailed order was to be passed by the District Development Officer. It was admitted that the petitioner was appointed as Education Inspector in the District Panchayat and as per the settlement between the parties on the pay and allowances which he was withdrawing. When the petitioner was absorbed he was appointed on the post of Clerk as per Govt. Resolution dated 15-12-1987. Hence, there was no question of reversion of the petitioner from the post of Education Inspector to the post of Clerk, as alleged. The petitioner was getting pay and allowances as per the terms finalised under the directions of this Court in the settlement arrived at between the parties. Learned counsel for the petitioner pointed out from the rejoinder affidavit that the petitioner was not a party to the aforesaid petition wherein settlement was arrived at and that was not binding on the petitioner. Only two employees out of 228 employees who were holding qualification for Education Inspector have been reverted to the cadre of clerk and the petitioner is one of them and those two including the petitioner have been reverted to those cadre of Clerk-cum-typist who have been absorbed. The post of Education Officer in the Sarvodaya scheme was sanctioned by the Govt. Resolution dated 7-6-1979 and pay and qualification for that post were prescribed in the said resolution.

4. Learned counsel for the petitioner submitted that the petitioner has been reverted to the post of Clerk-cum-typist by the resolution dated 15-12-87. The petitioner has worked as Education Inspector for about 20 years and still he is working as Education Inspector under the directions of this Court. The petitioner was direct recruit in the Sarvodaya scheme and thereafter he was transferred to Panchayat service wherein he was posted as Education Inspector. Now by the impugned Government Resolution the petitioner cannot be reverted to the post of clerk-cum-typist. Learned counsel for the petitioner relied upon the case of Hussain Sasansaheb Kaladgi Vs. State of Maharashtra reported in AIR SC 1627, wherein it has been held "A direct recruit to a post cannot be reverted to the lower post. It is a general principle of law that any person is directly recruited on any post whether that post is temporary he cannot be reverted from that post to any other post. At the most service could be terminated. But the person so recruited cannot be reverted to lower post on which he

was not recruited.

5. It is not disputed that the present petitioneer is a direct recruit as Educational Inspector in the Sarvodaya scheme as well as in District Panchayat on absorption in Panchayat service. Later on the impugned order has been passed reverting the petitioner to the post of Clerk-cum-typist which is not permitted by the law and the power exercised by the Government in reverting the petitioner to the lower post of Clerk-cum-typist is arbitrary and not sustainable in the eye of law at all.

6. Accordingly, the petitioner is allowed and clause (4) of the Government Resolution dated 15-12-1987 whereby the petitioner has been reverted to a lower post of Clerk-cum-typist is struck down and the respondents are directed to treat the petitioner as an Education Inspector from the date 15-12-1987 and to give all consequential benefits and also to treat the petitioner at par with the Educational Inspectors who are working in the Panchayat. The respondents are further directed to make necessary arrangement for payment of arrears of pay and allowances admissible under the Rules, within a period of three months. Rule is made absolute accordingly, with no order as to costs.

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